

# Frequently Asked Questions About Adoption in Massachusetts

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**WARNING: Adoption is a serious legal procedure that involves the termination of the legal parental rights of birth parents and the granting of legal parental responsibilities to the adoptive parents. Individuals who are contemplating an adoption should consult legal and clinical professionals before proceeding. The information contained in this document is only a general summary of Massachusetts adoption policies and procedures. It is not intended to substitute for legal advice about any particular individual or situation.**

Massachusetts law prohibits the placement of children for adoption by any person or organization other than a licensed or approved placement agency (except where the adoptive parents are related to the child by blood or marriage). M.G.L. c. 28A, §11(c). All children must, therefore, be placed through a licensed private adoption agency or the Massachusetts Department of Social Services. The adoption statute (M.G.L. Chapter 210) applies equally to both private agency and DSS adoptions. In addition to this statute, state regulations also govern adoptions. Such regulations include Department of Early Education and Care regulations (102 CMR 5.00) and DSS regulations (110 CMR 1.00-16.00). This document is intended to address legal aspects of adoption that are common to DSS and private agency adoptions.

## **BIRTH MOTHER RELATED**

- 1. When can the birth mother start the adoption process?**
  - She can begin planning any time during her pregnancy.
- 2. Can the birth mother choose the adoptive parents?**
  - Yes, such adoptions are referred to as “identified,” “designated,” or “parent-initiated” adoptions. In most Massachusetts adoptions, birth parents surrender the child to the legal custody of a child-placement agency, DSS or a private adoption agency, which retains the authority to make the final placement determination as the child’s legal custodian. If a birth mother requests that her child be placed with specific adoptive parents, and the agency completes a home study assessment of the prospective adoptive parents and finds them suitable, the agency will almost always respect the request of the birth parent.
  - As an alternative, the agency may provide the birth parents with profiles of prospective adoptive parents that it has approved for adoption. A birth parent may request a religion preference.
  - If the child is in the custody of the Commonwealth, the Department of Social Services will explore kin as potential adoptive placements.

- 3. Can the birth mother see and hold the baby after the birth?**
  - Yes, this is encouraged.
  
- 4. What expenses can the adoptive parents pay for on behalf of the birth mother and child?**
  - DEEC regulations governing child-placement agencies provide that a birth parent shall neither benefit nor suffer financially as a result of their pregnancy. The regulations outline the specific financial assistance, including time limitations and dollar amount caps, that may be provided to birth parents, in accordance with a birth parent's documented financial need. Permissible expenses include living expenses (lodging, food, utilities, and clothing), medical expenses (prenatal, birthing, and other pregnancy-related medical expenses), transportation (to obtain medical, legal, counseling, and other pregnancy-related services), support services (educational, vocational, recreational, and religious services), and legal services. Reimbursement for these expenses may only be paid to a birth parent by or through a licensed child-placement agency, not directly by adoptive parents.
  
- 5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?**
  - Yes. Many agencies will routinely ask or require a minor birth parent to consult an independent attorney or will ask the court to appoint a guardian ad litem. In Massachusetts, a minor is defined as a child between the ages of 14 and 18.
  
- 6. When does the birth mother actually sign the legal documents required for the adoption?**
  - Written consent by either birth parent can be executed no earlier than the fourth calendar day after the date of birth of the child to be adopted.  
M.G.L.c.210§2
  
- 7. Can the birth mother change her mind before signing the legal consents to the adoption?**
  - Yes. An adoption cannot proceed without the mother's signed consent, unless the need for her consent is dispensed with through a court proceeding.
  
- 8. Can the birth mother change her mind after signing the legal consents to the adoption?**
  - A consent executed in accordance with the provisions of the law is final and irrevocable from date of execution.  
M.G.L.c.210§2

**9. Can the birth mother communicate with the adoptive parents and child after the adoption?**

- Post-adoption contact between birth and adoptive parents may be handled informally or through a court-approved Open Adoption Agreement. Per this agreement, the birth and adoptive parents agree to a certain level of post-adoption communication, usually through the agency.
- Massachusetts adoption law also provides for court-enforceable Open Adoption Agreements, which must contain certain statutory terms and which must be approved by the court prior to the date of the adoption decree.

M.G.L.c.210§6C

**10. Can a birth mother anonymously surrender a newborn child?**

- A birth parent may leave an infant up to seven days old with a designated facility (hospital, police department, manned fire station) without criminal liability. This is allowed under provisions of the MA Safe Haven Law.

M.G.L.c.119§§ 391-392

**11. What happens if the birth parents do not agree that adoption should be the plan?**

- In a situation involving parental unfitness, the Department of Social Services can file a petition with the Court to terminate parental rights (technically, to “dispense with the need for parental consent”). If the Court determines that the birth parent(s) is unfit under Massachusetts law, the Court may dispense with the need for parental consent and allow an adoption to proceed.
- If a birth mother wishes to place her child and the birth father is not known, cannot be located, or is unwilling to participate, his rights can be dispensed with by a similar court proceeding. If a birth father actively opposes and objects to an adoption, unless his rights can be terminated, the adoption cannot proceed unless and until a court terminates his parental rights.

M.G.L.c.210§3

**BIRTH FATHER RELATED**

**1. Does the father of the baby have to be notified of the birth mother’s adoption plan?**

- Yes. In order for the court to enter an adoption decree, notice must be given to the birth and/or legal father of the child unless either: (a) he has signed a written consent to the adoption; or (b) his rights have been dispensed with by court order or decree.

M.G.L.c.210§2

**2. How is the father of the baby notified of the mother's adoption plan?**

- If the father has not signed an adoption consent, then there are two options. The agency may file a petition to dispense with the need for his consent as soon as the child is born. The court will require notice of such petition be provided to the father by in-hand service or certified mail if his address is known, or by publication if in-hand service is not possible. In the alternative, the father will need to be given notice of the petition for adoption. The court will order service in the same manner as in a petition to dispense with parental consent.

M.G.L.c.210§3,4

**3. Can the father of the baby choose the adoptive parents?**

- Yes, same as #2 under birth mother's rights.

**4. What happens if the biological father of the baby is not the baby's legal father?**

- The Massachusetts adoption statute provides that if the father has filed with the Department of Social Services a declaration seeking to assert the responsibilities of fatherhood, or has been adjudicated the father of the child, he must be given notice of the adoption petition if he has not signed an adoption consent or had his rights dispensed with by court order. Good practice requires the same steps be taken for any biological father of the child, regardless of whether he has registered or had his paternity adjudicated.

M.G.L.c.210§4A

**5. What happens if the husband (legal father) is not the biological father?**

- The legal father's rights need to be addressed. He is entitled to notice of the adoption petition, unless he has signed an adoption consent or had his rights dispensed with by court order.

M.G.L.c.210§1

**6. What happens if the mother does not know who the biological father is?**

- The unknown father must be dispensed with through a petition to dispense with parental consent, or he must be given notice of the adoption (and an opportunity to object). In either case, the notice will be provided by newspaper publication once a week for three consecutive weeks in a newspaper selected by the court. The publication will generally be ordered in the city or town where the birth father was last known to reside, in the place of birth, or in the county where the petition is filed, depending on the amount of information available about the unknown or unnamed birth father.

M.G.L.c.210§3

**7. What happens if the mother refuses to give the name of the biological father?**

- Same as #6. If no person has acknowledged paternity or been adjudicated the father of the child, then the agency must request that the mother voluntarily provide a sworn written statement that identifies the father and his current or last known address.

M.G.L.c.210§2

**8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?**

- Yes, but it has no legal effect. He must also express any objection after birth.

**9. Can the birth father change his mind before signing the legal consents to the adoption?**

- Yes, a birth father can change his mind before signing a legal consent to the adoption.

M.G.L.c.210§1

**10. Can the birth father communicate with the adoptive parents and child after the adoption?**

- Post-adoption contact between birth and adoptive parents may be handled informally or through a court-approved Open Adoption Agreement. In an informal arrangement, the birth and adoptive parents agree to a certain level of post-adoption communication, usually through the agency. Their informal agreement is not binding or enforceable should one party fail to abide by it.
- Massachusetts adoption law also provides for court-enforceable Open Adoption Agreements, which must contain certain statutory terms and which must be approved by the court prior to the date of the adoption decree.

M.G.L.c.210§6C

**11. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?**

- Yes. Many agencies will routinely ask or require a minor birth parent to consult an independent attorney or will consider asking the court to appoint a guardian ad litem. In Massachusetts, a minor is defined as a child between the ages of 14 and 18.

**12. Can the birth father change his mind after signing the legal consents to the adoption?**

- A consent executed in accordance with the provisions of the law is final and irrevocable from date of execution.

M.G.L.c.210§2

**13. Can a birth father anonymously surrender a newborn child?**

- A birth parent may leave an infant up to seven days old with a designated facility (hospital, police department, manned fire station) without criminal liability. This is allowed under provisions of the Safe Haven Law. M.G.L.c.119§§ 391-392

**14. What happens if one or both of the birth parents do not agree that adoption should be the plan?**

- In a situation involving parental unfitness, the Department of Social Services can file a petition with the Court to terminate parental rights (technically, to “dispense with the need for parental consent”). If the Court determines that the birth parent(s) is unfit under Massachusetts’s law, the Court may dispense with the need for parental consent and allow an adoption to proceed. If a birth mother wishes to place her child and the birth father is not known, cannot be located, or is unwilling to participate, his rights can be dispensed with by a similar court proceeding. If a birth father actively opposes and objects to an adoption, unless his rights can be terminated, the adoption cannot proceed unless and until a court terminates his parental rights.

M.G.L.c.210§3

**ADOPTIVE PARENT RELATED**

**1. Who can adopt? How do birth parents become matched with adoptive parents?**

- Under the Massachusetts adoption laws, any adult over the age of 21 can adopt any person younger than himself, unless such person is his or her spouse, sibling, uncle or aunt. If married, the petitioner’s spouse must join the adoption petition, except under a few narrow exceptions.
- With some limited exceptions, adoptive parents must be approved for a placement by a licensed child-placement agency through the home study assessment process. Except in parent-identified or designated adoptions, birth parents typically select adoptive parents for their children from profiles provided to them by the agency describing prospective adoptive parents who have been approved for placement.

M.G.L.c.210§5A

**2. What information about the birth parents and the child must be provided to the adoptive parents?**

- Massachusetts regulations (102 CMR 5.10(9)) provide a list of information that private child-placement agencies must provide to adoptive parents prior to the placement of a child, including:
  - the child's first name, gender, and date of birth
  - reports of a complete medical examination
  - all information regarding the medical history, mental health history, special talents, abilities or interests, race and national origin of the child and birth family, and any other information which would be relevant to the growth and development of the child
  - developmental history
  - educational information, if the child is of school age
  - social report on the child
  - description of the child's current living situation including how the child came into care, type of placement setting, first names of any siblings in placement, if available, their ages and the continuing relationship of the birth family with the child, if any
  - a summary of the child's current legal status
  - information on any previous caretakers of the child
  - a statement explaining why any of the above information is omitted or incomplete.

**3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?**

- A licensed agency (public or private) conducts an assessment of the prospective adoptive parents, including a criminal record (CORI) check. The adoption court also performs a CORI check. Massachusetts regulations provide detailed requirements for such home study assessments and criteria for evaluation of applicants.

M.G.L.c.210§5A

**4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?**

- Yes. In many cases voluntary infant placements are made upon the child's discharge from the hospital, prior to any court involvement. The majority of such placements are considered "legal risk" foster care placements until the rights of all applicable birth parents are terminated, through voluntary written consents or court proceedings.

- 5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?**
- Yes, once the adoption is finalized, the adoptive parents have full rights in decision-making for that child, regardless of what may have been discussed or agreed upon prior to the adoption.
- 6. Under what circumstances can an adopted child communicate with the birth parents?**
- Adoptive parents have the same rights as other parents, and can determine with whom their child has contact. However, if the birth and adoptive parents have entered a court-approved Open Adoption Agreement that the adoptive parents fail to comply with, the birth parents may seek specific enforcement through the court.
- M.G.L.c.210§6C
- 7. What information must the birth parents provide to the adoptive parents?**
- Birth parents are not required under statute or regulation to provide any information to the agency or adoptive parents. However, birth parents are strongly encouraged to provide as much background information as possible. If no person has acknowledged paternity or been adjudicated the father of the child, then the agency must request that the mother voluntarily provide a sworn, written statement that identifies the father and his current or last known address.
- M.G.L.c.210§2
- 8. Who supervises the adoptive placement and for how long?**
- A child must reside with the adoptive parents for at least six months before an adoption decree can be allowed by a court. Either the agency with legal custody of the child, or the agency that home studied the adoptive family supervises the placement during this time.
- 9. When is the adoption final?**
- When the court issues a decree of adoption, which may not happen sooner than six months after placement (with limited exceptions). Generally, adoptions are finalized about 6-10 months after placement.
- M.G.L.c.210§6

## **COURT SPECIFIC PROCEDURES**

### **1. Who initiates the adoption process?**

- A birth mother or birth couple contacts a Massachusetts adoption agency with an interest in making an adoption plan. The agency provides pregnancy counseling. Some Massachusetts agencies are able to provide some financial support during the course of the pregnancy. A social worker works with the birth mother/couple throughout the process.
- An individual or couple contacts an adoption agency with an interest in adopting. A social worker works with the individual/couple throughout the process. The social worker completes a home study of the interested parties. Once the individuals/couples are matched and the child is placed in the home for a period of six months, the court can legalize the adoption.

### **2. When are the legal adoption papers filed with the court?**

- The legalization papers may be filed six months after the placement of the child.

### **3. When do the birth parents actually sign the legal documents for adoption?**

- Birth parents sign a surrender no sooner than four days after the birth of the child.

### **4. What happens if the birth parents do not agree on the adoption plan?**

- If the birth parents do not agree on the plan for adoption, one can surrender their parental rights and the other can parent the child. In a situation involving parental unfitness, the Massachusetts Department of Social Services can file a petition with the Court to terminate parental rights. If the Court determines that the birth parent(s) is unfit under Massachusetts law, the Court may dispense with the need for parental consent and allow an adoption to proceed. If a birth mother wishes to place her child and the birth father is not known, cannot be located, or is unwilling to participate, his rights can be dispensed with by a similar court proceeding. If a birth father actively opposes and objects to an adoption, unless his rights can be terminated, the adoption cannot proceed unless and until a court terminates his parental rights.

M.G.L.c.210§3

### **5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?**

- Yes, in a situation involving parental unfitness, the Massachusetts Department of Social Services can file a petition with the Court to terminate parental

rights. If the Court determines that the birth parent(s) is unfit under Massachusetts law, the Court may dispense with the need for parental consent and allow an adoption to proceed. If a birth mother wishes to place her child and the birth father is not known, cannot be located, or is unwilling to participate, his rights can be dispensed with by a similar court proceeding.

## MISCELLANEOUS QUESTIONS

1. **What is the process for accessing adoption files, including identifying information in Massachusetts?**
  - a. Adoptees over the age of 18 may access non-identifying information in their file. After age 21, they may access identifying information in their file as long as the appropriate consents are in the file.
  - b. Birth parents may be given non-identifying information regarding the family that adopted their child.
  - c. Adoptive parents may be given non-identifying information about the adoptee until the adoptee is 21 years of age.
- **Beginning December 5, 2007**, certain individuals may apply to the Registry of Vital Records and Statistics (RVRS) for a copy of a birth record established prior to an adoption (without first obtaining a court order). Access is limited by state law to the following individuals:
  - Adoptees who were born in Massachusetts on or before July 14, 1974.
  - An adult child (18 years or older) of a deceased parent who was an adoptee born in Massachusetts on or before July 14, 1974.
  - The parent or legal guardian of a child (under 18 years of age) whose deceased parent was an adoptee born in Massachusetts on or before July 14, 1974.
- **Beginning January 1, 2008**, the following additional individuals may also apply:
  - The adoptive parent of a child (under 18 years of age) born in Massachusetts on or after January 1, 2008.
- **Beginning January 1, 2026**, the following additional individuals may also apply:

- An adult adoptee (18 years or older) who was born in Massachusetts on or after January 1, 2008.
- d. Section 4 of Chapter 109 of the Acts of 2007, which provides for an Adoption Contact Information Registry, remains subject to appropriations. At present, funds have not been appropriated to set up the Registry. The Registry will be capable, at a minimum, of recording updated addresses and other information supplied by birth parents and adoptees for one to contact the other. This registry is entirely voluntary.
- e. The law does not impact the laws of confidentiality that adoption agencies are bound by.

**2. What is considered kinship adoption?**

- a. A Kinship Adoption is the adoption of a family member or the adoption of a child with whom the individual has had a long time, close relationship with the birth parent. Adoption of a stepchild is called an Independent Adoption. Independent and Kinship Adoptions are completed in Probate Court. There is no requirement for the involvement of an adoption agency or for a home study. Since there is no agency involvement, they are far less costly.

**3. Are contracts or binding agreements between birth and adoptive families regarding openness allowed?**

- a. In Massachusetts, birth and adoptive families may choose to do a Post Open Adoptive Agreement. The agency adoption worker acts as the intermediary in writing the agreement. The agreement is presented to the court along with the Adoption Decree. While the Adoption Decree is legally binding, the Post Open Adoption Agreement is enforceable but not legally binding.